

HARL AND JEWEL RIGHTMIRE

IBLA 80-590
80-591

Decided March 5, 1981

Appeals from decisions of the California State Office, Bureau of Land Management, declaring seven lode mining claims null and void in part. CA MC 52602, 52603, 52604, 52588, 52591, and 52596 through 52598.

Affirmed in part (CA MC 52603); set aside and remanded in part.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land
-- Withdrawals and Reservations: Effect of

Portions of mining claims located on lands on which the minerals have been withdrawn from mineral entry are properly declared null and void ab initio; however, where the case record does not support a finding that all the claims in issue are partially situated on such land, the case will be remanded for readjudication.

APPEARANCES: Harl and Jewel Rightmire, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Harl and Jewel Rightmire appeal from two decisions of the California State Office, Bureau of Land Management (BLM), dated March 13, 1980, declaring seven lode mining claims null and void in part. 1/ The claims, situated in sec. 34, T. 27 S., R. 40 E., Mount

1/ These claims are more particularly described as: Frisco #1, CA MC 52602; Frisco #3, CA MC 52604; Hilltop #1, CA MC 52588; Hilltop #4, CA MC 52591; Hilltop #9, CA MC 52596; Hilltop #10, CA MC 52597; and Hilltop #11, CA MC 52598. Appellant has pursued no appeal with respect to the Frisco #2 claim, CA MC 52603, covered by one of the BLM decisions. Appellants admit that this claim is partially located on patented land.

Diablo meridian, Kern County, California, were located in December of 1973 and 1975 and recorded with BLM.

In its decisions BLM notified appellants that:

According to the official records of this office, a portion of each of the above named claims is included in patent 04-67-0041 dated September 19, 1966, which was issued under the provisions of the Mining Claims Occupancy Act of October 23, 1962 (76 Stat. 1127) [30 U.S.C. § 701 (1976)], for the S 1/2 SE 1/4 NE 1/4 SW 1/4 said sec. 34, containing 5 acres. All minerals and mineral materials in the land patented were reserved to the United States in accordance with [section 7 of the Mining Claims Occupancy Act] 30 U.S.C. § 707 [(1976)] which provides:

In any conveyance under this chapter the mineral interests of the United States in the lands conveyed are reserved for the term of the estate conveyed. Minerals locatable under the mining laws or disposable under section 601 to 604 of this title, are withdrawn from all forms of entry and appropriation for the term of the estate.

BLM held that the land was not open to mineral entry either in December of 1973 or 1975, and declared those portions of appellants' seven mining claims lying within the S 1/2 SE 1/4 NE 1/4 SW 1/4 sec. 34, T. 27 S., R. 40 E., Mount Diablo meridian, Kern County, California, null and void ab initio.

Appellants, in their statements of reasons for appeal, contend that "there are no known patents on the above claims" other than the Frisco #2.

[1] Since minerals locatable under the mining laws were withdrawn from all forms of entry and appropriation for the term of the estate, in accordance with 30 U.S.C. § 707 (1976), the land within the boundaries of patent No. 04-67-0041 upon which any portions of appellants' claims were located was not open to location either in December of 1973 or 1975. It is well settled that portions of mining claims located on lands within a withdrawal and not open to mineral entry are properly declared null and void ab initio. Gerald Byron Bannon, 40 IBLA 162 (1979); Barry C. Binning, 39 IBLA 390, 391 (1979). However, we are unable to determine from the present state of the record how seven lode mining claims, each 1,500 feet by 600 feet, could be situated so that one 5-acre tract (330 feet by 660 feet) of land covers portions of all those claims. Since appellants admit that part of the Frisco #2 claim

(CA MC 52603) is located on the patented land, we affirm that part of the decision which related to that claim; however, the decisions as to the remaining six claims are set aside and remanded for readjudication to determine what portions of those claims, if any, lie within the patented area. 2/ Appellants shall have the right to appeal any readjudication decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed in part and set aside and remanded in part.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

2/ While the decision affirms the finding of invalidity of those portions of a mining claim located on patented lands, nothing herein purports to affect any extralateral rights which may be attendant to appellants' lode locations.

